Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	WT Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	RM-8143
Calling Systems	)	

To: The Commission

REPLY COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular") hereby replies to those comments submitted in response to the Commission's *Further Notice of Proposed Rulemaking* seeking comment on possible solutions to enable 911 callback capability to noninitialized handsets.[1] The weight of the comment record demonstrates that proposed technical solutions are neither feasible nor justified and most proposed regulatory solutions would have adverse public interest consequences. Accordingly, Cingular agrees with various state 911 groups and other commenters that the best solution is to remove the requirement to forward 911 calls from noninitialized handsets to Public Safety Answering Points ("PSAPs"). If the requirement is retained, labeling and educational efforts are the next best alternative.

DISCUSSION

As a threshold matter, the *Further Notice* sought comment on the scope of the callback problem to assess the need for possible action with respect to noninitialized handsets.[2] There is no substantiated

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[1] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, FCC 01-175 (rel. May 25, 2001) ("*Further Notice*").

[2] *Further Notice* at ¶ 7.

evidence in the record that would support any quantification of the scope of the callback problem.[3] It is therefore highly questionable whether "there is a problem sufficiently extensive to warrant further regulation."[4] Even assuming, *arguendo*, that there is a "meaningful" problem,[5] as discussed below the weight of the record reveals that the costs of the proposed solutions are not outweighed by any resulting benefits.

Specifically, the majority of commenters addressing the issue oppose any efforts to mandate technical solutions because they would (i) open networks to fraud, (ii) adversely impact scarce numbering resources, (iii) entail major network costs, and (iv) divert resources away from Phase I and II compliance efforts.[6] Notably, two major switch vendors, Lucent Technologies ("Lucent") and Nortel Networks ("Nortel"), confirm that no cost-effective technical solution exists or can be developed. According to Nortel, "it is [not] possible with current network and handset design to provide either permanent or temporary 911 call back numbers to out-of-service handsets."[7] Nortel explains:

> A permanent number solution would put increasing quantities of numbers in network memory, likely exceed network memory capacity, speed telephone number exhaust, open the door to fraud and likely require

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[3] *See, e.g.*, Comments of the Texas Commission on State Emergency Communications and certain Texas Emergency Communications Districts ("Texas 911 Agencies") at 3; *cf.* Comments of the Independent Cellular Services Association and MT Communications ("ICSA/MT") Comments at 3; Wireless Consumers Alliance, Inc. ("WCA") Comments at 4.

[4] Comments of the Cellular Telecommunications and Internet Association ("CTIA") at 8.

[5] *Cf.* Comments of Secure Alert, Inc. ("Secure Alert") at ii.

[6] *See, e.g.*, Comments of AT&T Wireless Services, Inc. ("AT&T Wireless") at 1-4; CTIA at 4-8; Cingular at 2-7; Intrado Inc. ("Intrado") at 1; North American GSM Alliance LLC ("North American GSM Alliance") at 2-5, 6; Rural Cellular Association ("RCA") at 3; Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") at 6-13.

[7] Letter from Doug Wolff, Nortel to Jim Propst, Sprint PCS, at 1 (undated), appended to Sprint PCS Comments as Exhibit 2.

handset reprogramming (if possible).

> A temporary number solution (*e.g.* assignment of a Temporary Local Dialing Number or TLDN) would 1) require the network to store a pool of dialable numbers, 2) require a redesign of the network to check for temporary number need (requiring all 911 calls to be checked for validation), 3) aggravate number exhaust (while less than the "permanent" solution aggravation), 4) open the door for fraud, and 5) likely require handset re-programming (if possible). [8]

Accordingly, Nortel warns that "a requirement to assign a call back number to out-of-service handsets in circulation today would require a major network redesign, likely cost Nortel Networks millions of dollars in design efforts, take years of standards redefinition and design, and potentially result in a solution that would not work, especially for current handsets."[9] Lucent agrees, noting that "development of a callback feature would be costly and entail significant development time. Lucent cannot provide an estimate of these costs, because no current solution or standard exists. . . . [W]e are confident that the *time and expense of this effort would be substantial*."[10]

In contrast to the expert opinions of these established network vendors, ICSA claims that "simple [p]rogramming [c]hanges" will permit call back, citing its current practice of programming donated phones using an unused area code.[11] ICSA expressly acknowledges, however, that "ICSA does not hold itself out as technical experts in the area of cellular telephone switching."[12] Another non-expert, WCA, similarly

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[8] *Id.*

[9] *Id.*

[10] Letter from Chris Fernandez, Lucent to Jim Propst, Sprint PCS, at 1 (July 5, 2001) (emphasis added), appended to Sprint PCS Comments as Exhibit 1.

[11] Comments of ICSA/MT at 5-7, 8. This procedure is highly questionable. Because typical industry practice is not to have unassigned area codes resident in switches, there can generally be no callback to such phones because most switches will not recognize the number.

[12] Comments of ICSA/MT at 8.

claims that its proposed solution (whereby the switch will assign a substitute telephone number and match it with the actual Mobile Identification Number/Electronic Serial Number of the phone) "is easily and quickly deployed" and will involve only "trivial software changes."[13] The lack of network design expertise of these commenters speaks for itself.

While Richard Levine presents a proposed solution on behalf of Beta Industries, consisting of using Beta's new data base(s) and switch as an "orphanage" Mobile Switching Center/Home Location Register for all "orphan" noninitialized phones,[14] his proposal appears to have several flaws based on the information submitted. Specifically, the proposal would (i) necessitate modifications to carrier switches and substantial software changes to wireless networks, (ii) require that all PSAPs have SS7 capability (a situation that is not the case today), and (iii) take several years to implement (*i.e.*, is a long-term solution at best). Thus, attempts to portray the costs involved as "economical[]," "minimal" or "negligible" are untrue.[15] It is also not possible to determine from the information provided whether the solution would be compatible with the standards in place for carrier networks.

Apart from technical feasibility issues, Levine appears to ask the Commission to condone an illegal "tying" arrangement by making its proposal contingent on a mandate that "all other aspects of [its] new technology" be "implemented and used by the telephone industry, even those aspects beyond the scope of the present document."[16] As Levine concedes, "certain other aspects of the invention, beyond the

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[13]*See* Comments of WCA at 4.

[14]*See* Comments of Richard Levine at 1-2.

[15]*See, e.g., id.* at 1, 7, 8.

[16]*Id.* at 5; *see also id.* at 3-4. What those additional aspects are and how much they would cost is left undetermined. Of course, such a proposal would be inconsistent with the Commission's philosophy of technological neutrality.

specific emergency callback issue addressed in this document, are expected to be revenue-producing for [Levine], which is the economic basis for providing these specific services free of charge."[17] The courts have held such arrangements, whereby a producer with market power in the sale of one product uses that market power to insist that the purchaser also buy a different (tied) product, to be violative of antitrust laws.[18] Because such a mandate would provide Levine with market power to tie the purchase of the "other aspects" of his technology to his callback solution, Levine's proposal should be rejected.

Accordingly, given the infeasibility of a technical solution, Cingular agrees with the Texas 911 Agencies, as well as other state 911 bodies, that the Commission should "reconsider and possibly eliminate the requirement for carriers to forward calls from noninitialized handsets."[19] AT&T Wireless similarly agrees that the most reasonable solution may be for the FCC to reverse its policy requiring carriers to forward 911 calls from noninitialized phones.[20] Eliminating the requirement would serve the public better than the imposition of further regulatory burdens that may pull resources away from Phase II deployment efforts.[21] Moreover, North American GSM Alliance explains that eliminating the requirement would bring the United States in line with other administrations throughout the world which do *not* allow emergency

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[17]Comments of Richard Levine at 5.

[18]*See, e.g., Eastman Kodak v. Image Technical Services*, 504 U.S. 451, 461 (1992); *see also Times-Picayune v. United States*, 345 U.S. 594, 605 (1952) (finding tying arrangements contrary to the Sherman Act because they restrain free trade by "coerc[ing] the abdication of buyers' independent judgment as to the 'tied' product's merits and insulat[ing] it from the competitive stresses of the open market").

[19]Comments of the Texas 911 Agencies at 3; *see also* Comments of the Washington State Enhanced 911 Program at 2 (suggesting that the FCC consider phasing out the requirement in favor of including carriers in a lifeline program); North Carolina Wireless 911 Board at 2 (proposing that all wireless phones capable of dialing 911 should be initialized with a carrier).

[20]Comments of AT&T Wireless at 4-5.

[21]*See* Comments of Intrado at 3.

calls from noninitialized handsets because of the risk of fraud and criminal activities.[22] As discussed above, Nortel has warned that this risk could become a reality were a technical solution to be pursued.

Finally, assuming the Commission declines to eliminate the requirement to forward 911 calls from noninitialized handsets, regulatory intervention should not extend beyond labeling and/or education efforts. Many commenters, for example, expressed concerns that the imposition of mandatory requirements on donated handsets may have the unintended consequence of discouraging donation efforts in the first instance.[23] Similarly, manufacturers oppose efforts to require that 911-only phones provide callback, asserting that such a requirement would double the cost of the phone, putting it out of reach of many consumers and possibly driving manufacturers out of business.[24] Thus, short of stepping up consumer awareness, the FCC should maintain the *status quo*.[25]

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[22]Comments of North American GSM Alliance at 5.

[23]*See* Comments of AT&T Wireless at 4; CTIA at 11; Cingular at 2; Mid-Missouri Cellular at 3; RCA at 2.

[24]*See, e.g.,* Comments of Secure Alert at 8-10.

[25]*See* Comments of Sprint PCS Comments at 14.

CONCLUSION

Given the lack of a feasible technical solution, the Commission should eliminate the requirement to forward 911 calls from noninitialized phones. If the requirement is retained, the Commission should refrain from regulatory intervention other than to encourage the use of labeling in conjunction with the continued education of users of noninitialized phones.

Respectfully submitted,

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